



**COMMENTS OF THE MUSCOGEE CREEK NATION ON THE
NATIONAL INDIAN GAMING COMMISSION'S
PROPOSED RULE OF 25 C.F.R. PART 543 –
MINIMUM INTERNAL CONTROL STANDARDS FOR CLASS II GAMING**

APRIL 22, 2013

The Muscogee Creek Nation ("Nation") welcomes the opportunity to comment on the National Indian Gaming Commission's ("NIGC") proposed amendments to the Minimum Internal Control Standards ("MICS") for Class II gaming, which were published in the *Federal Register* on February 20, 2013.¹

GENERAL COMMENTS

The Nation recognizes that the proposed regulation represents the NIGC's effort to prevent theft and fraud in addition to the enhancement of security in relation to kiosks. However, we have serious concerns with the level of specificity required by the proposed rule. The proposed rule does not consider the differences between tribal gaming operations in regard to the tier level of the operation or the differences between kiosks that may be in operation in various gaming locations. The proposed rule further fails to consider the various methods that are currently employed by gaming operations to perform kiosk accountability, fills, or other necessary functions associated with kiosks. Moreover, we are concerned that the rule will impose unnecessary requirements on tribal gaming operations that will ultimately translate to the unnecessary expenditure of tribal revenues. For the reasons set forth more fully below, we urge the NIGC to reconsider the proposed rule.

SPECIFIC COMMENTS

1. Proposed Rule 25 C.F.R. § 543.17(h) Kiosk drop, count and fill standards

The Nation supports the NIGC goal of safeguarding kiosks from fraud or theft. However, the requirements contained within the proposed rule, particularly those relating to drop and count and surveillance are overly specific. The proposed rule at § 543.17(h)(2) requires three agents to perform the drop of the kiosk. No regard to facility size is factored into the proposed rule. We believe that this rule is particularly unreasonable as applied to small tribal gaming operations. Similar problems exist within the proposed rule § 543.17(h)(4) wherein any access of the kiosk requires an independent agent to

¹ 78 Fed. Reg. 11793-11795 (Feb. 20, 2013).

generate a kiosk report which shall include date, time, total bills, total amount of currency, total amount and number of vouchers, unique asset identification number of the kiosk, as well as unique asset identification number of each financial storage component. We believe that the proposed rule creates an unnecessary reporting requirement inasmuch as the same does not to consider routine maintenance reasons for kiosk access. Alternative reporting requirements should be utilized for maintenance kiosk access.

The proposed rule assigns tribal gaming personnel to the kiosk drop and count procedure without regard to the varying practices of tribal gaming operations. At § 543.17(h)(4)(ii) the proposed rule provides that the kiosk report cannot be “viewed by any member of the count team and must be immediately forwarded to accounting or placed in a secure storage area...” No consideration is given to the practicality of this procedure to all tribal gaming operations. The proposed rule also assumes that kiosk accountability procedures are performed uniformly across gaming operations by members of the count team. Many gaming operations use cashier personnel to fill, reconcile, and verify kiosk content in the same manner as a cashier drawer. Tribal gaming operations should have sufficient flexibility in the rule to accommodate their specific procedure for kiosk accountability.

2. Proposed Rule 25 C.F.R. § 543.17(i) Kiosk count standards

Here, as with the provisions in the proposed rule noted above, the provisions contain the assumption that all tribal gaming operations utilize the same procedures for kiosk drop and count. The proposed rule may not be practical for those gaming operations that utilize alternate secure areas for the kiosk count. Moreover, the level of specificity of the proposed rule improperly dictates technology as well as certain areas of the gaming operations to be utilized. The proposed rule also creates excessive testing burdens for the count equipment. At § 543.17(i)(6) the proposed rule requires “count equipment and systems” testing prior to “every count”. Periodic testing of currency counters is a current requirement of gaming operations. We believe it is impractical to require testing prior to every count.

3. Proposed Rule 25 C.F.R. § 543.17(j) Controlled keys.

This section adds to the physical security controls required by § 543.18(d)(4). The Nation finds that the proposed rule on controlled keys is impractical and may dictate purchase of alternate kiosks or require a retrofit of existing kiosks.

4. Proposed Rule 25 C.F.R. § 543.21 Surveillance standards

The Nation has particular concern regarding the surveillance standards of the proposed rule. It is unclear as to the number of cameras that may be required to achieve compliance with the provisions of this section. The proposed rule at § 543.21(c)(6) requires the surveillance system to monitor and record activity at the kiosk “with sufficient clarity to identify the activity and the individuals performing it, including maintenance, drops or fills, and redemption of wagering vouchers or credits.” We are concerned that this requirement would require multiple cameras on each kiosk to capture

the above activities. If multiple cameras prove to be necessary, millions of dollars in tribal gaming revenues will be expended to achieve compliance with the proposed rule. Tribal gaming locations commonly have numerous kiosks located in each facility depending on the size of the gaming location. In addition to the purchase and installation of equipment, gaming operations would also bear the burden of added employee costs to monitor the numerous additional cameras that will be required in each facility. The Nation requests that the NIGC clarify this section of the proposed rule.

CONCLUSION

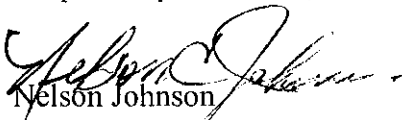
The Nation fully supports NIGC regulation that protects tribal gaming revenues from theft or fraud. However, we request that in regard to the proposed rule herein that assessment be made to identify the risk of loss as the same applies to kiosks, and regulations to protect those specific risks be proposed accordingly. The proposed rule places excessive burdens on tribal gaming operations. Moreover, it is our belief that the proposed rule takes a one-size-fits-all approach to regulation without consideration for the vast differences in size and existing procedure employed in the many tribal gaming operations.

Further, the proposed rule will result in significant expenditure of tribal resources in manpower and surveillance equipment in order for tribal gaming operations to achieve compliance. It is particularly alarming that the proposed rule, which will require such expenditures of tribal funds, is not based upon any identified risk. We are aware of no incident of fraud or theft relating to kiosks within tribal gaming operations.

Finally, we wish to emphasize that most, if not all, gaming operations have already developed and have been implementing kiosk cash handling policies and procedures. We therefore question the need for such prescriptive and detailed requirements, especially in light of the fact that the proposed rule was not triggered by any particular security incident or event. In our view, the safeguards provided by § 543.18, as well as the inherently lower risk associated with kiosks, permit far greater flexibility in kiosk procedures than the proposed rule currently allows.

We thank you for consideration of our comments and hope that they are helpful in your final drafting of the proposed rule.

Respectfully submitted,


Nelson Johnson
Gaming Commissioner